

November 26, 1996

Mary L. Cottrell, Secretary
Commonwealth of Massachusetts
Department of Public Utilities
100 Cambridge Street
Boston, MA 02202

Re: Gaslantic Corporation, D.P.U. 96-101; Letter Response of Fall River Gas Company

Dear Madam Secretary:

Procedural Background

On behalf of Fall River Gas Company ("Fall River" or the "Company") and in accordance with the Scheduling Memorandum of the Hearing Officer dated November 7, 1996, we file this Letter Response to the Memorandum in Opposition to Fall River Gas Company's Motion to Dismiss and Motion for Summary Judgment and Motion to Compel Answer or in the Alternative for Summary Judgment (the "Gaslantic Reply") filed by Gaslantic Corporation ("Gaslantic") on November 1, 1996. We have also included a copy of this Letter Response of Fall River on diskette (Word Perfect 5.1) for the Department's ease of reference.

Principal Issues Raised

The Petitioner in this matter, Gaslantic, has, in essence, raised two issues to be resolved by the Department:¹

¹Fall River notes that Gaslantic has elected to raise these issues at the adjudicatory level without seeking resolution of billing dispute issues at the Department's Consumer Division. While the Consumer Division is expressly authorized to resolve residential billing disputes, with the consent of the parties, the Consumer Division can help resolve (and has helped resolve) commercial billing disputes. Fall River submits that the Consumer Division could have been a more appropriate forum for Gaslantic's billing dispute.

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1. Can Gaslantic, an out-of-state gas marketer, which failed on **three** separate occasions in August 1992 to deliver any gas to its Massachusetts customer, Globe Manufacturing Company ("Globe") -- without any notification to either Globe or Fall River -- now raise a claim, **four years after-the-fact**, for a refund of \$16,941.81 relating to the Company's bill rendered in September 1992; notwithstanding the fact that the customer, after originally disputing the bill in 1992, paid the bill in full and has since continued to take service from the Company. For the reasons set forth in the Answer, Motion to Dismiss and Motion for Summary Judgment dated October 17, 1996 of Fall River (Fall River's "Original Answer") and in this Letter Response, the answer is clearly "no."

2. Can the same out-of-state gas marketer compel the Department to order a change in Fall River's recently approved Transportation Terms and Conditions Rate Schedule, M.D.P.U. No. 245, notwithstanding: (a) extensive public notice of Fall River's base rate case in D.P.U. 96-60 and Gaslantic's election not to participate in such case; (b) the extensive review of M.D.P.U. No. 245 in the evidentiary proceedings in D.P.U. 96-60; and (c) the subsequent review of M.D.P.U. No. 245 in the D.P.U. 96-60 settlement process which resulted in the comprehensive settlement dated October 2, 1996 (the "D.P.U. 96-60 Settlement") and approved by the Department on October 16, 1996? For the reasons set forth in Fall River's Original Answer and in this Letter Response, the answer is again clearly "no."

Overview of This Letter Response

At the outset, the Company emphasizes that Gaslantic's Petition for Investigation and Complaint initially filed on October 4, 1996 ("Gaslantic's Petition") raises a comparatively very small billing dispute (less than \$17,000.00), where the facts are not materially in dispute.² Fall River submits that this a matter especially well-suited to dismissal or summary judgment. Indeed, the dismissal of Gaslantic's Petition (or summary judgment in Fall River's favor) is particularly justified giving the totality of circumstances in this matter where: the Petitioner has elected a full scale adjudicatory process for a small billing dispute in lieu of seeking recourse in a more appropriate forum; the Petitioner has failed to satisfy its burden of proof and justify why any extraordinary relief should be granted **four years after-the-fact**; it is uncontroverted that the fundamental failure to

²As discussed further below, Fall River is willing to assume the facts set forth in Gaslantic's Petition for purposes of allowing the Department to act on its Original Answer (which includes motions to dismiss and for summary judgment). Should this matter proceed beyond the pleading stage, Fall River reserves the right to refute facts alleged by Gaslantic. In particular, Fall River would refute Gaslantic's contention that Fall River somehow had actual notice in August 1992 of Gaslantic's failure to deliver gas, especially in light of the undisputed fact that Gaslantic, on three separate occasions, failed to provide any notice of these failures to either Fall River or Globe.

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perform (for which Petitioner now seeks recourse from Fall River) is the Petitioner's; and, the facts and law regarding this matter strongly support the Company's position.

In filing this Letter Response, the Company reiterates each of the arguments contained in its Original Answer and does not change its position with respect to any of the arguments contained in its Original Answer based upon Gaslantic's Reply.³ Accordingly, in this Letter Response the Company amplifies and further defines the positions set forth in its Original Answer and directly addresses the inaccurate arguments contained in Gaslantic's Reply. In filing this Letter Response, the Company notes that it elects not to respond to the extreme and highly inappropriate tone of Gaslantic's response. Instead, the Company elects to focus on uncontroverted fact and law. Lastly, with respect to the structure of this Letter Response, the Company will respond directly to the arguments contained in Gaslantic's Reply in the order such arguments are raised by Gaslantic.⁴

Gaslantic's Egregiously Late Filing of its Petition, Standing
Alone, is Grounds for Dismissal

Gaslantic's Petition is egregiously late. As indicated in the Company's Original Answer, Gaslantic's Petition is filed over four years after Gaslantic failed to deliver any gas to Globe on three separate days in August 1992. The Department should dismiss Gaslantic's Petition (or, in the alternative grant the Company summary judgment) based upon this factor alone. As indicated in the Company's Original Answer, the Company's position in this regard is supported by the statute of limitations, the doctrine of laches and the Department's established procedural practice. See Original Response at ¶¶ 15, 16 and 18. With specific respect to the statute of limitations, G.L. c.260, §5(a) specifically prohibits actions based upon consumer protection theory that are raised four years after the alleged cause of action accrues. Gaslantic contends that this statute of limitations is inapplicable because the statute of limitations for contract matters is six years. Fall River takes issue with Gaslantic's arguments in light of the Supreme Judicial Court's express findings that, as a result of the "extensive regulation" of public utilities by the Department, service provided to customers is taken out of the realm of "ordinary contract" and places it upon the rigidity of a "quasi-statutory enactment." Boston Edison Company v. City of Boston, 390 Mass. 772 at 777 (1984). Accordingly, the argument based solely upon contract law that Gaslantic raises is inapposite. The Company maintains its position, based upon the unique circumstances of this matter, that the appropriate statute of limitations that applies here is G.L. c.260 §5(a) (regarding consumer protection actions) and that

³In the Hearing Officer's Scheduling Memorandum of November 7, 1996, the Hearing Officer noted that Gaslantic's Reply was late filed. Id.

⁴The failure by the Company to address any specific argument advanced by Gaslantic does not indicate the Company's concurrence therewith.

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G.L. c.260, 5(a) prohibits Gaslantic's petition as a matter of law.⁵ Moreover, even if the Department were to decline to grant the Company's motions based upon the applicability of statute of limitations, overwhelming precedent in other areas supports the dismissal of Gaslantic's egregiously late filing. As indicated in the Company's Original Answer, it is firmly settled in Massachusetts that a complainant who unreasonably delays instituting a cause of action is barred by the equitable doctrine of laches. G.E.B. v. S.R. W., 422 Mass. 158, 166 (1986). Further, a complainant unreasonably delays when it knows or should have known of its alleged rights and unreasonably delays proceeding after gaining such knowledge. Id. at 166. Under any possible set of circumstances, Gaslantic's unexplained four year delay clearly bars it from pursuing its Petition under the well-established doctrine of laches. See Original Answer at ¶ 15.⁶ Relatedly, Department procedural precedent stressing the need for the efficient conduct of adjudicatory proceedings supports the Company's position that Gaslantic's Petition should be dismissed. See e.g. Ruth C. Nunnally d.b.a L & R Enterprises, D.P.U. 92-34-A at 4 (1993); Boston Edison Company, D.P.U. 90-335-A at 4 (1992). The raising of comparatively minor billing disputes four years after-the-fact is directly opposed to efficient administrative conduct. Moreover, Gaslantic's late-filed complaint clearly represents the very type of action for which the Department articulated its well-defined standard for dismissal. See Cambridge Electric Light Company, D.P.U. 95-36/94-10 at 10-11 (1995) (dismissal granted where non-moving party would be entitled to no relief under any statement of facts that could be proven in support of its claim). Fall River also notes that 220 CMR 1.06(6)(a) grants the Hearing Officer the discretion to make "all decisions regarding. . . procedural matters which may arise in the course of the hearing." Id. Based upon this authority, as well as the Department's authority under G.L. 25, §5 to conduct administrative proceedings under its own rules of practice and procedure, the Department clearly has the discretion to dismiss Gaslantic's four year old complaint.

Gaslantic's argument that evidentiary proceedings are somehow required to determine whether the doctrine of laches should apply can be dismissed out of hand. No hearing is necessary to establish that a billing dispute raised four years after payment in full is unacceptable and barred, particularly where Gaslantic has made no claim whatsoever of any new knowledge or new evidence regarding the events of August 1992. Likewise, contrary to Gaslantic's assertions in its Reply, no evidentiary

⁵The Company stands by its citation in its Original Answer to D.P.U. 85-13-4 (1986) for the proposition for which it was cited: that the statute of limitations can bar customer complaints. At no time, however, did the Company advance the argument that the appropriate statute of limitations in this matter is the six year period for pure contract matters found in G.L. c.260, §2 and found to be appropriate based upon the unique and distinct facts in D.P.U. 85-13-4.

⁶Fall River notes that Gaslantic's delay has already caused injury and expense by requiring the Company to revisit and review previously closed files. Further, if Gaslantic's Petition were to proceed to evidentiary hearings, Fall River would be significantly impaired in recovering evidence four years after-the-fact.

hearings are required to determine that the well-established legal principles of accord and satisfaction also bar Gaslantic's late claims. Given the discussion of the bill for August 1992 in the Fall of 1992 and Globe's subsequent payment in full to Fall River, the doctrine of accord and satisfaction clearly bars Gaslantic's current complaint. See e.g. Emerson v. Deming, 305 Mass. 478 (1939); Original Answer at ¶ 16. In short, four years after-the-fact -- after Globe has remained a customer of Fall River (that has consistently paid its bills in a timely fashion) -- is too late for Gaslantic to seek to argue that Globe was not reasonably satisfied with the disposition of this matter.

Fall River also notes that the Hearing Officer may elect to exercise her discretion and find that Gaslantic lacks standing to raise any claims in this proceeding. Gaslantic has provided no written assignment of rights from Globe in its pleadings -- indeed, Globe has fully paid the bill in dispute and continues to take service from the Company. G.L. c.30A, §1 clearly provides that adjudicatory proceedings only relate to proceedings in which "the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." Id. On its face, Gaslantic's petition fails to make the case that it is such a "specifically named person" and that it has standing to raise issues in this proceeding. Therefore, the Department may dismiss Gaslantic's petition based upon its failure to satisfy its burden of establishing the threshold standing requirements of G.L. c.30A.

The Undisputed Facts Clearly Demonstrate the Appropriateness of the Company's Actions

As indicated above, for purposes of its motions for dismissal and summary judgment, the Company is willing to accept the facts as alleged by Gaslantic, although the Company reserves the right to refute such facts in the event this case proceeds to evidentiary proceedings.⁷ It is undisputed that Gaslantic failed to provide any gas for Globe on three separate occasions in August 1992 and that Gaslantic provided absolutely no advance or contemporaneous notice of these failures to either Fall River or to Globe. It is also undisputed that Fall River did not receive any specific instructions from either Globe or Gaslantic in August 1992 regarding how it should proceed during these three failures. It is further undisputed that, even after the first failure of delivery when Gaslantic knew (or should have known) of the failure and of Fall River's supplying backup gas to Globe, neither Globe nor Gaslantic indicated to Fall River that it should proceed any differently in the event of future failures to deliver (e.g. that Fall River should not supply backup gas to Globe). Accordingly, based upon the undisputed facts stated above, and even if one were to assume that Fall River had actual knowledge of Gaslantic's failure to perform (which it did not) -- the essential questions are, did the Company act reasonably and was it entitled to compensation for its actions. The answer to these questions is clearly "yes." Indeed, the customer's complete payment of the invoice for service rendered in August 1992 tellingly supports the reasonableness of the Company's actions.

⁷Specifically, Fall River would refute Gaslantic's assertion that the Company was actually aware of Gaslantic's failure to perform.

In reviewing these matters, it is helpful to review what possible options the Company had with respect to Gaslantic's failures in August 1992. Conceivably, if the Company had actual and immediate notice of Gaslantic's failures (which the Company did not, but which need not be determined for purposes of the motions to dismiss and for summary judgment), the Company could have shut-off service to Gaslantic immediately, thereby conceivably grinding Gaslantic's operations to a halt, notwithstanding the fact that the failure to perform was Gaslantic's not Globe's.⁸ Alternatively, Fall River could have continued to provide service to Globe, which approach would enable Globe to continue operations and thereby continue to generate revenues and create employment opportunities within Massachusetts. Given these fundamental options, the reasonableness and good faith of the Company's actions at the time of Gaslantic's failures in August 1992 are clear and there is no justification whatsoever for second guessing these actions four years after-the-fact. Fall River would also note that the time frame of Gaslantic's failures is important. In August of 1992, the Company was just beginning to implement quasi-firm (*i.e.* transportation) service for customers. The current well-established electronic bulletin board and notification procedures in place today (given the prevalence of transportation) were not in effect.⁹ Gaslantic's failure to perform created new challenges that had not arisen before for Fall River. The net result was that Fall River continued to provide a safe and reliable backup supply of gas to Globe, notwithstanding the fact that neither Gaslantic nor Globe provided any notice of the failure to Fall River. Moreover, after the first failure to deliver, and after Gaslantic and Globe knew (or should have known) of the failure, neither Gaslantic nor Globe provided any notice to Fall River that it should do anything differently with respect to future failures to deliver. It is now too late for Gaslantic to seek to shirk responsibility for these decisions and omissions.

Based upon these facts, Fall River's actions in August 1992 were patently reasonable and Fall River deserved to be compensated for the service it provided to Globe. Globe did provide such compensation to Fall River when it paid in full the bill rendered in September 1992 by Fall River. Gaslantic's attempt, four years after-the-fact, to revisit these issues violates the Department's well-established policies emphasizing the need for efficiency in the conduct of administrative proceedings. See generally Original Answer at ¶ 10. Therefore, Gaslantic's Petition should be dismissed.

With specific reference to the amounts billed to (and paid by) Globe, Fall River emphasizes that these amounts were calculated based upon the cost of maintaining the backup supply of gas as approved in ¶ 18.C. of the then effective rate schedule, M.D.P.U. No. 214-A. Fall River's bill

⁸The Company understands that in 1992 Globe had permit restrictions that significantly limited its alternative fuel options.

⁹Such developments also show the very different context and characteristics of transportation today -- indeed, the Company's tariff and actions should be evaluated in the context of the applicable start-up phase of transportation.

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appropriately reflected the costs of maintaining a reliable backup supply, necessarily including firm, year-round commitments, plus the penalty (i.e. the 150% multiplier) based upon such costs as required by M.D.P.U. No. 214-A. Gaslantic's arguments that it should only pay, in essence, a spot market price for discrete days in August would in no way fully compensate the Company and its customers for maintaining a reliable, year-round backup source of gas. Indeed, Gaslantic's position is entirely inconsistent with the Department's well-established transportation ratemaking policy that firm customers should not subsidize service to transportation customers. See Commonwealth Gas Company, D.P.U. 94-123 at 18 (1994).

In concluding its review of the facts regarding this matter, the Department may wish to balance which party should bear the burden of Gaslantic's failure to perform in August 1992: Gaslantic, the party responsible for supplying gas to Globe and responsible for the failure to supply such gas; or the Company and its customers, the parties responsible for maintaining the reliable supply of backup gas that enabled Globe to remain in business notwithstanding Gaslantic's failures. The Company submits that the answer is clear. The ultimate burden of payment should fall upon the party causing the need for such payment: Gaslantic.

Fall River's Actions in August 1992 Complied with All Tariffs in Effect at that Time

Gaslantic argues that when it failed to provide any gas whatsoever for Globe and Fall River provided backup service to Globe, all the Company was doing was providing balancing services. See Gaslantic's Reply at 5-8. Gaslantic also argues that "with balancing service, the Company has **no obligation** to supply gas. The Company can exercise its discretion to supply no balancing gas at all." Id. at 6. Gaslantic further advances the position that "balancing is a **discretionary** supply service." Id. (emphasis added). Gaslantic, a Delaware company, is simply wrong in these arguments and, moreover, such arguments reflect a serious misunderstanding of the way gas transportation is implemented in Massachusetts. Fall River would note that perhaps this misunderstanding has led to Gaslantic's continuing to press these claims four years after-the-fact and hopes that a brief review of transportation requirements in Massachusetts will assist in resolving these matters.

From the time of the Department's earliest transportation orders, the Department has emphasized that all local distribution companies must provide "appropriate terms and conditions of [transportation] service." See Transportation of Natural Gas, D.P.U. 85-178, at 66 (August 7, 1987). The Department noted that such terms and conditions must contain provisions regarding "the potential imbalances between gas received for the account of the end user and gas delivered to the end user (also called undertakes and overtakes)." Id. at 64. Further, the Department has expressly found that balancing is mandatory and not discretionary, in direct contravention of Gaslantic's arguments: "Balancing **is required** as a result of the customer's inability to exactly match daily gas consumption with the daily amounts the customer must order from its gas supplier." Commonwealth Gas Company, D.P.U. 91-60 at 75-76 (October 31, 1991) (emphasis added). The Company's Terms

and Conditions for Transportation Service (then called "quasi-firm" service) in effect in August 1992, M.D.P.U. No. 214-A, also required that the Company had the obligation to provide balancing services. See e.g. §14(a) ("The Company will purchase a Positive Daily Balance from the Customer") and §15(a) ("The Company will sell gas to a Customer to satisfy a Daily Negative Balance"). Therefore, in direct contravention of Gaslantic's contentions, it is clear that balancing service is mandatory in Massachusetts.¹⁰

Contrary to Gaslantic's argument that the "Department has wisely refrained from "defining" what balancing and standby service mean" (see Gaslantic Reply at 6), the Company notes that the Department has consistently and expressly recognized a distinction between balancing and standby (also called backup) service. See Original Answer at ¶¶ 7, 8 and 9. As indicated above, balancing is an operational service provided in light of the fact that receipts and deliveries of gas will not be matched exactly without at least some balancing. Indeed, M.D.P.U. No. 214-A as approved by the Department expressly defines "balancing" to mean "the customer's obligation to make deliveries equal receipts, with due consideration given to retention quantities." Id. See also Commonwealth Gas Company, D.P.U. 87-122 at 7 (1987). The Department has defined backup service as "a vital adjunct service to firm transportation service for customers who require access to gas supplies when their own supplies are unavailable." Id. at 34. In other words, while balancing is a mandatory operational component of transportation service, backup service is a distinct adjunct service that is provided to transportation customers that do not wish to "risk an interruption of gas supply availability." Id. at 26. Further, M.D.P.U. No. 214-A, as approved by the Department, makes expressly clear that balancing relates to the obligation "to make deliveries equal receipts" and that such provisions only relate to "Gas" received by the Company, with "Gas" being defined as "natural gas that is received by the Company from a Transporting Pipeline at a designated Receipt Point and delivered by the Company to the Delivery Point. . .". See e.g. M.D.P.U. No. 214-A, §§ 1.N, 1.O, 1.R and 1.S.¹¹ On the applicable days in August 1992, the Company received absolutely no "Gas" and, therefore, could not provide balancing service for Globe as argued by Gaslantic. In sum, extensive Department

¹⁰The provisions of §13.B regarding balancing that are cited by Gaslantic in support of its argument that balancing is discretionary relate to the well-established principle that balancing services are secondary to the needs of the Company's customers purchasing firm gas sales service and that balancing cannot be provided if such firm gas sales service would be impeded. §13.B also provides that the Company has no obligation to deliver "Gas" in excess of that received from the Transporting Pipeline. Neither of these factors provide that balancing is an optional service as contended by Gaslantic.

¹¹§1.X of M.D.P.U. No. 214-A also makes clear that Transportation Service only occurs when "Gas" is first received at the "Receipt Point." Here, no "Gas" was received by the Company, so pure Transportation Service could not be provided; however, backup service could be, and was, provided to Globe and was paid for by Globe.

precedent, as well as the terms of the Company's tariff, demonstrate that: 1) in direct opposition to Gaslantic's arguments, balancing is a mandatory, not discretionary, service; 2) balancing and standby are distinct services; and 3) given Gaslantic's failure to deliver any "Gas" to the Receipt Point in August 1992, Fall River was not able to provide "balancing" or "Transportation" services to Globe. Accordingly, Gaslantic's arguments that it should only be billed a balancing charge (see e.g. ¶ 21 of Gaslantic's Petition) are inconsistent with express tariff requirements and can be dismissed out of hand.

Further, the above cited Department precedent, as well as the language of M.D.P.U. No. 214-A, supports the Company's contention that, in essence, the service provided in August 1992 for Globe was standby/backup service. Without limiting the foregoing, the Company notes that it is undisputed that Gaslantic provided no notice whatsoever to the Company of its failure to provide supplies for Globe, but that Globe continued to take service from the Company, not once, but three times in August 1992. Clearly, if Gaslantic had not wanted the Company to continue to provide service, especially after the first failure to deliver by Gaslantic, it could and should have specifically instructed the Company to shut off supplies to Globe in the event of failures. No such instructions were given -- not even after the first failure on August 2, 1996 when Gaslantic knew (or should have known) that Fall River did not shut off service to Globe. Therefore, the Company was entirely justified in continuing to provide service to Gaslantic on these days in August 1992. Specifically, the Company provided backup service and calculated the bill ultimately paid by Globe using the billing assumption that, although Gaslantic did not originally elect to take and pay for any backup service, Globe had altered that decision (as expressly allowed by §18.A of M.D.P.U. No. 214-A) and took backup service because of the unanticipated failure of its marketer. Fall River provided that backup service (which Globe had not been paying for on an ongoing basis) and charged Globe the fair price for that service based upon the tariff. Globe received such bill, requested clarification of the bill, received clarification and paid the bill. There is simply no basis in Fall River's tariffs (or otherwise) for Gaslantic to re-raise these issues four years after-the-fact.

Fall River also emphasizes that §20 of M.D.P.U. No. 214-A expressly reserved the right for Fall River to render "Additional Charges" to Globe in the event that the Company incurred costs to provide service to Globe. To the extent that the Department does not view the charges to Globe as charges for purely standby service, Fall River submits that, by default, such charges must be deemed "Additional Charges" under §20 of M.D.P.U. No. 214-A.¹² Under §20.A., the Company expressly has the right to make such "Additional Charges", just as the "affected customer shall have the right to petition the Department of Public Utilities to conduct an investigation thereof." See 20.B.. However, §20.B. also makes clear that any such petition must be made within thirty days following notice to the customer of the Company's intention to collect such charges. As indicated above, no

¹²As indicated supra, such charges cannot be balancing charges in light of the express language of the tariff.

such petition was timely filed by either Globe or Gaslantic. Indeed, after the Company notified Globe of its bill for services in August 1992, the bill was fully discussed and ultimately paid in full. Therefore, to the extent that the charges rendered to Gaslantic in August 1992 are not deemed to be charges for purely standby service, by default they must be deemed "Additional Charges" and M.D.P.U. No. 214-A required any complaint regarding such "Additional Charges" to be made within thirty days after notice of the charges -- not four years after-the-fact.

Gaslantic Cannot Force the Department to Change the Transportation
Tariffs Extensively Reviewed, Settled Upon and Approved in D.P.U. 96-60

Gaslantic continues to urge a re-litigation of the Company's current transportation Terms and Conditions, M.D.P.U. No. 245, notwithstanding the fact that these matters were completely litigated, discussed during settlement negotiations, reflected in a comprehensive settlement agreement among diverse parties and, ultimately, approved in full by the Department on October 16, 1996. As noted in the Company's Original Answer, extensive Department precedent supports the Company's position that the Department should dismiss Gaslantic's arguments in light of the Department's clear and consistent policies seeking to ensure administrative efficiency and finality of regulatory decisions. See e.g. KES Brockton, Inc. v. Department of Public Utilities, 416 Mass. 158 (1993); Ruth C. Nunnally d/b/a L & R Enterprises, D.P.U. 92-34-A (1993); Cambridge Electric Light Company/Commonwealth Electric Company/SESCO, Inc., D.P.U. 91-234-E/94-15 (1994). See Company Original Answer at ¶¶ 10, 11 and 12. Indeed, Gaslantic has not demonstrated any statutory standing, or reasonable basis, for its request for a new review of M.D.P.U. No. 245 -- especially since such tariff was fully approved by the Department on October 16, 1996.

Other Matters

For the reasons set forth in ¶¶ 12 and 17 of the Company's Original Answer, the Department can readily dismiss Gaslantic's arguments that the Company's settlement offer to Gaslantic in 1992 is somehow relevant in this matter and that Fall River should pay Gaslantic's costs in this matter. The Company notes that Gaslantic's Reply raises no new issues and the Company reconfirms each of its arguments with respect to these matters found in ¶¶ 12 and 17 of its Original Answer. Indeed, Gaslantic entirely fails to address the compelling precedent of the Federal Rules of Evidence, Rules 407 and 408 (with respect to subsequent clarifications of procedures and offers of settlement) that dispositively support the Company's position.¹³ Fall River also notes that, to the extent that the

¹³Fall River notes its business judgment that, in certain circumstances, it can be prudent to tender settlement offers where the amount in dispute is comparatively small, especially in light of potential litigation costs. These offers only reflect pragmatic business practice and the desire not to burden the Department with day-to-day operational matters. Further, the edits that Gaslantic complains of regarding balancing services found in M.D.P.U. No. 245 (and approved

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Department elects to reconsider its well-established position that it has no jurisdiction to award attorneys fees and similar costs (see Plymouth Rock Energy Associates, D.P.U. 92-122 at 13 (1994)), the Company would respectfully request that it be granted recovery of its fees and costs incurred as a result of responding to Gaslantic's unsupported Petition, filed four years after these matters were resolved with the Company's customer, Globe.

Conclusion

For all the reasons stated herein and in the Company's Original Answer, Fall River respectfully requests that the Department: a) dismiss Gaslantic's Petition or, in the alternative; b) grant the Company's Motion for Summary Judgment; and c) grant such other or further relief as may be necessary or appropriate.

Respectfully submitted,

Fall River Gas Company
By its attorneys,

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for Commonwealth Gas Company in D.P.U. 95-102) only provide enhanced clarification regarding policies, but not new changes to those policies. See Direct Testimony of L. Carloni at 5-6 in Commonwealth Gas Company, D.P.U. 95-102 (1995).

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bcc: Peter H. Thanas
Robert Plourde

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated at Boston, Massachusetts this 26th day of November, 1996.

Eric J. Krathwohl
Counsel

Of Counsel for

Fall River Gas Company